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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,306	04/16/2002	Francis Showering	NOVAPI00US	8228

7590 02/04/2005
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 1900 East 9th Street
 Cleveland, OH 44114

EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,306

Applicant(s)

SHOWERING, FRANCIS

Examiner

James N Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 58-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 58-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 58-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosl et al. US 5,848,717 in view of Ohmi et al. US 5,762,217.

Bosl '717, in the embodiment of fig. 1, teaches a plastic closure for bottles, comprising a plastic cap (1) snap-fit over a bottle opening (4), a retaining bead (3) with a lead-in ramp surface and abutment surface inclined at an angle less than the inclination of the ramp surface, interlocking with a container neck bead (5). The disclosure teaches the cap is capable of sealing against positive internal pressure, for example, that caused by "carbonated beverages" (col. 2, line 56). The cap only seals against the bottle opening top and exterior surfaces.

Bosl '717 does not teach a plurality of segmented lugs braced by a band.

Ohmi '217 discloses a Resin Cap, comprising a cap (1) with a segmented skirt comprising a plurality of lugs (4a), and ring (2) configured for retaining the cap in the applied position. The ring is connected to the skirt by a plurality of frangible bridges (11), which also comprise "vertical ridges" (see fig. 22). Furthermore, the band provides tamper-evidencing (col. 1, lines 61-62) and allows the cap to be easily removed, without the use of a tool (col. 3, lines 10-20). Ohmi '217 further discloses in col. 7, lines 17-20, "one bridge portion may be provided in a skirt piece 4a, or two bridge portions may be provided on both ends of skirt piece 4a." In an embodiment providing two bridge portions (11) to each segmented lug/skirt piece (4a), the reference anticipates the limitation, "a plurality of vertical ridges." Being formed of plastic, the frangible connections are inherently capable of collapsing to some degree.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Bosl '717, providing a segmented skirt and band, braced by two

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vertical ridges/bridge portions, as taught by Ohmi '217, motivated by the benefit of locking the cap to a container, providing tamper evidencing, and allowing the cap to be easily removed without the use of a tool.

Regarding claim 62, Bosl '717 does not teach the diameter of the container, although the closure could be molded to fit any sized container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the size of the closure cap of Bosl '717 to have a lateral dimension of 4 cm, or any other suitable size, motivated by the benefit of sealing a like-sized container. Furthermore, it has been held that a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 63, Bosl '717 does not teach the range of internal pressures the closure is capable of withstanding. The invention is drawn to withstanding internal pressures, especially those created by the containment of carbonated beverages.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap to withstand at least 60 psi, or any other internal pressure, motivated by the benefit of preventing blow-off of the cap from the container due to internal pressure caused by a carbonated beverage.

3. Claims 58-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Towns et al. US 5,368,178 in view of Ohmi et al. US 5,762,217.

Towns '178 teaches a plastic closure for bottles, comprising a plastic cap (10) snap-fit over a bottle opening (43), a retaining bead (35) with a lead-in ramp surface (37) and abutment surface (34) inclined at an angle less than the inclination of the ramp surface, interlocking with a container neck bead (49). The disclosure teaches the cap is capable of sealing against positive internal pressure, for example, that caused by "carbonated beverages" (col. 1, lines 6-10). The cap only seals against the bottle opening top and exterior surfaces.

Towns '178 does not teach a plurality of segmented lugs braced by a band.

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Ohmi '217 discloses a Resin Cap, comprising a cap (1) with a segmented skirt comprising a plurality of lugs (4a), and ring (2) configured for retaining the cap in the applied position. The ring is connected to the skirt by a plurality of frangible bridges (11), which also comprise "vertical ridges" (see fig. 22). Furthermore, the band provides tamper-evidencing (col. 1, lines 61-62) and allows the cap to be easily removed, without the use of a tool (col. 3, lines 10-20). Ohmi '217 further discloses in col. 7, lines 17-20, "one bridge portion may be provided in a skirt piece 4a, or two bridge portions may be provided on both ends of skirt piece 4a." In an embodiment providing two bridge portions (11) to each segmented lug/skirt piece (4a), the reference anticipates the limitation, "a plurality of vertical ridges." Being formed of plastic, the frangible connections are inherently capable of collapsing to some degree.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Towns '178, providing a segmented skirt and band, braced by two vertical ridges/bridge portions, as taught by Ohmi '217, motivated by the benefit of locking the cap to a container, providing tamper evidencing, and allowing the cap to be easily removed without the use of a tool.

Regarding claim 62, Towns '178 does not teach the diameter of the container, although the closure could be molded to fit any sized container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the size of the closure cap of Towns '178 to have a lateral dimension of 4 cm, or any other suitable size, motivated by the benefit of sealing a like-sized container. Furthermore, it has been held that a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 63, Towns '178 does not teach the range of internal pressures the closure is capable of withstanding. The invention is drawn to withstanding internal pressures, especially those created by the containment of carbonated beverages.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Towns '178 to withstand at least 60 psi, or any other internal pressure,

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motivated by the benefit of preventing blow-off of the cap from the container due to internal pressure caused by a carbonated beverage.

Response to Arguments

4. Applicant's arguments with respect to claims 58-75 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

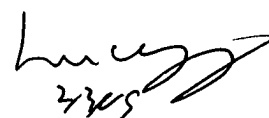
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

A handwritten signature in black ink, appearing to read 'Lee Young', with the number '2305' written below it.

LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700